

REMARKS/ARGUMENTS

Applicant acknowledges receipt of the Office Action dated January 5, 2009. By this Response, claims 3-6, 15-16, and 19-22 are cancelled, and claims 1 and 13 are amended. Claims 1, 2, 7-11, 13, 14, and 17 are pending in this application. Claim 6 is rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Claims 1-11, 13-16, and 19-22 are rejected under 35 U.S.C. §102(b) as being anticipated by Mizushima, U.S. Patent Application Publication No. 2002/0017642 ("*Mizushima*"). Claim 17 is rejected as unpatentable over *Mizushima* and Murthy, U.S. Patent No. 6,723,622 ("*Murthy*"). Applicant believes the pending claims are allowable over the art of record and respectfully requests reconsideration and allowance of all claims.

I. Claim 6 has been cancelled.

The Examiner rejected claim 1 under 35 U.S.C. §112, first paragraph. By this Response, claim 6 has been cancelled.

II. Claims 1, 2, 7-11, 13, and 14 are not anticipated by *Mizushima*.

The Examiner rejected claims 1-11, 13-16, and 19-22 as being anticipated by *Mizushima*. Applicant submits that claims 1, 2, 7-11, 13, and 14 are not anticipated by *Mizushima* because *Mizushima* fails to disclose each and every limitation of these claims. Please note that claims 3-6, 15-16, and 19-22 are cancelled by this Response.

Claim 1 is an independent claim upon which claims 2 and 7-11 depend. Claim 13 is an independent claim upon which claim 14 depends. Claim 1 as amended recites "wherein the rate of decrease of the ratio varies linearly on opposite sides of an intermediate point disposed within the layer at which the rate varies." Claim 13 as amended recites "the rate of decrease of the ratio being varied linearly on opposite sides of an intermediate point disposed within the layer where the rate is varied." Nothing in *Mizushima* discloses such recitations.

Please note that claim 1 has been amended to include recitations of claim 3, and claim 13 has been amended to include recitations of claim 15. In rejecting the now cancelled claims 3 and 15, the Examiner propounded that “*Mizushima* discloses in Fig 7 the device . . . in which the rate of decrease of the ratio varies linearly on opposite sides of an intermediate point disposed within said layer at which the rate varies (e.g., sloped rate of q2 is different than sloped rate of q3).” (Office Action, pg. 3, para. 7., emphasis added) Applicant respectfully sets forth that the disclosure of *Mizushima* is to the contrary of what the Examiner propounded. The rate of decrease of the ratio of *Mizushima* varies linearly about a constant composition layer and does not vary linearly on opposite sides of an intermediate point disposed within the layer as required by claims 1 and 13. (*Mizushima*, para. [0061]) For instance, in regards to reference q2, Figure 7 of *Mizushima* clearly shows that the rate of decrease of the ratio varies linearly and is followed by a portion in which the rate of decrease of the ratio remains constant, which is followed by a further rate (q3) in which the ratio varies linearly. (*Mizushima*, para. [0061]; Fig. 7)

In view of the recitations in independent claims 1 and 13 that are not disclosed by *Mizushima*, the Applicant respectfully requests that the Examiner withdraw the § 102(b) rejections and allow independent claims 1 and 13. Applicant further requests that the Examiner also withdraw the § 102(b) rejections of dependent claims 2, 7-11, and 14, since it is submitted that independent claims 1 and 13 are allowable. Dependent claims 2, 7-11, and 14 must *a fortiori* also be allowable, since they carry with them all the limitations of the independent claims 1 and 13 to which they ultimately refer.

III. Claim 17 is patentable over *Mizushima* and *Murthy*.

Applicant respectfully traverses the Examiner's rejection of claim 17 under §103 as being unpatentable over *Mizushima* and *Murthy*. Applicant submits that the Examiner has not made a *prima facie* case of obviousness in rejecting such claims.

Claim 13 is an independent claim upon which claim 17 depends. As noted above, nothing in *Mizushima* discloses all recitations of independent claim 13. Nothing in *Murthy* teaches or suggests the missing recitations of independent claim 13.

In view of the recitations in independent claim 13 that are neither taught nor suggested by *Mizushima* and *Murthy*, the Applicant respectfully submits that independent claim 13 is allowable over *Mizushima* and *Murthy*. Applicant therefore requests that the Examiner withdraw the §103 rejections of dependent claim 17, since it is submitted that independent claim 13 is allowable. Dependent claim 17 must be allowable, since it carries all the limitations of the allowable independent claim 13 to which it refers.

IV. Conclusion

Applicant respectfully requests reconsideration, allowance of the pending claims and a timely Notice of Allowance be issued in this case. If the Examiner feels that a telephone conference would expedite the resolution of this case, the Examiner is respectfully requested to contact the undersigned.

In the course of the foregoing discussions, Applicant may have at times referred to claim limitations in shorthand fashion or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art that have yet to be raised but which may be raised in the future.

Respectfully submitted,

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